UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and MONSANTO TECHNOLOGY LLC, Plaintiffs, v. E.I. DU PONT DE NEMOURS AND CO. and PIONEER HI-BRED INTERNATIONAL, INC., Defendants.	Case No. 09-cv-0686 (ERW)

EXHIBIT C

December 3, 2010 Letter to John Rosenthal from Amy Mauser

MEMORANDUM IN SUPPORT OF DEFENDANTS' THIRD MOTION TO COMPEL

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December 3, 2010

Via E-Mail

John J. Rosenthal, Esq.
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C., 20006-3817

Re: ***Monsanto Co. and Monsanto Technology LLC v. E.I. du Pont de Nemours & Co. and Pioneer Hi-Bred Int'l, Inc.*, Case No. 09-civ-0686-ERW (E.D. Mo.)**

Dear John:

This letter is in response to your letter, dated November 29, 2010, in which you advised that Monsanto has not produced the Syngenta and the original Dow Roundup Ready 2 Yield agreements and the documents relating to the negotiation of such agreements on the ground that Monsanto does not consider them relevant to DuPont's and Pioneer's antitrust claims.

Monsanto's unilateral decision to withhold the Syngenta and Dow Roundup Ready 2 Yield licenses on the basis of "relevance" is highly improper and frankly calls into question the integrity of Monsanto's entire production. It also raises serious questions about what other documents Monsanto is improperly withholding based on your views of relevance. At no time during any meet and confer session or in subsequent follow-up correspondence did Monsanto ever take the position that those license agreements were irrelevant. Nor would such a suggestion have been remotely warranted. Although it is not our burden to justify the relevance of our document requests to you, it should suffice to refer you to our antitrust counterclaims, core allegations of which detail a scheme by Monsanto to switch the industry – of which Dow and Syngenta are part – from Roundup Ready 1 to Roundup Ready 2 Yield. All documents relating to Dow's and Syngenta's Roundup Ready 2 Yield licenses and the factors which led Dow and Syngenta to sign them are plainly relevant – including documents relating to the negotiations of those licenses. Any suggestion to the contrary is ridiculous.

Consistent with the allegations in the counterclaims, the Court expressly permitted discovery on license provisions, including provisions relating to stacking. Specifically, the Court stated:

> [T]he Court ordered discovery to proceed on the full scope of the "switching strategy" allegations pled by Defendants. The license agreements are one component of the alleged "switching strategy," but as Defendants note, the purported overall strategy is also comprised of, among other things, allegedly anticompetitive restrictions on trait stacking, restrictions on change of control of seed companies, and co-branding restrictions. It is clear from the pleadings, and from their representations to the Court both at the hearing on this Motion and at

> the hearing that resulted in the September 16 Order, that Defendants also view these licensing practices as necessary components of the "switching strategy."
>
> Defendants assert that these licensing practices, when viewed in concert and in the context of monopoly power, violate § 2 of the Sherman Act, even if they might be permissible if analyzed individually. As such, the Court concluded that resolution of Monsanto's contract and patent claims would not moot the "switching strategy" allegations, and there was therefore no reason to prohibit Defendants from proceeding with discovery on those allegations.

Memorandum and Order, dated July 30, 2010, at 19-20.

Your arbitrary decision to withhold the actual agreements is even more surprising in light of your prior representations. In its written responses to DuPont's and Pioneer's document requests, Monsanto expressly stated that it would produce all "executed, non-standard Roundup Ready® and Roundup Ready® 2 Yield soybean license agreements." Monsanto's Responses and Objections to Defendants' Second Set of Requests for Production of Documents ("Responses"), Request No. 4; *see also* No. 5 (same for soybean germplasm).

In addition, Monsanto expressly agreed to produce documents concerning "'the process and timing for switching or transitioning' Monsanto's 'licensees from Roundup Ready® to Roundup Ready® 2 Yield in soybeans'"; "'incentives promised and/or offered for switching or transitioning from Roundup Ready® to Roundup Ready® 2 Yield in soybeans'"; and "'preferential pricing' Monsanto has offered to companies 'that agreed to switch from Roundup Ready® to Roundup Ready® 2 Yield in soybeans.'" Responses, Request No. 4; *see also* No. 5 (same for soybean germplasm).

We are not prepared to negotiate over the "categories of correspondence" that Monsanto must produce; we are entitled to all documents concerning the negotiation of such licenses, as well as internal discussions and deliberations concerning proposed Roundup Ready 2 Yield license agreements with Syngenta and Dow, that reside in the files of the 50 custodians that Monsanto agreed to search. Because the parties have already narrowed the scope of the search for responsive documents, any burden arguments associated with conducting the requested search are unwarranted. Indeed, as your colleague Mr. Lombardi stated during a discovery conference before Judge Webber:

> And the burden here I don't think is that tremendous, because under the protocol the parties agreed to, we are going to start with 50 custodians on each side. We are not asking them to go back and search their whole company. We're asking them to go back and search the 50 custodians that they have already collected from.

Transcript of Proceedings (November 23, 2010) at 50.

Please let us know by December 7, 2010 whether Monsanto will agree to promptly produce (1) all non-standard Roundup Ready 2 Yield license agreements; (2) all documents from the files of the 50 custodians relating to the negotiation of such agreements; and (3) all other documents that Monsanto previously agreed to produce concerning its Roundup Ready 2 Yield license agreements to the extent not already produced.

Sincerely,

Amy J. Mauser

cc: George C. Lombardi, Esq.
Gail J. Standish, Esq.
James M. Hilmert, Esq.
Greg G. Gutzler, Esq.
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